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## LEGISLATIVE CONTROL OVER CONTRACTS OF EMPLOYMENT: THE WEAVERS' FINES BILL.

THE Legislature of Massachusetts during the session of 1891 passed an Act popularly known as the "Weavers' Fines Bill."<sup>1</sup> The first section of this Act is as follows:—

"No employer shall impose a fine upon or withhold the wages or any part of the wages of an employé engaged at weaving, for imperfections that may arise during the process of weaving."

The second section provides penalties for violations.

The constitutionality of the Act has recently been tested in the case of *Commonwealth v. Perry*.<sup>2</sup> The defendant, a manufacturer under indictment for a violation of the Statute, was found guilty in the lower court; but his exceptions taken at the trial have been sustained in the Supreme Court, on the ground that the Legislature had no power to pass the Statute in question.

Two other States, Ohio and Illinois, have laws similar to the Weavers' Fines Bill.<sup>3</sup> These laws, however, are more general in their terms, and apply to all employers of workmen, the class of weavers not being the object of special protection. They have come into existence within a few months, and have not yet been discussed in the courts. The case of *Commonwealth v. Perry* is the first of its kind. and the decision, having been rendered by a

<sup>1</sup> Stat. 1891, c. 125.

<sup>2</sup> 28 N. E. Rep. 1126, Dec., 1891.

<sup>3</sup> Statute of Ohio, approved April 29, 1891, contains the following clause: "Whoever, without an express contract with his employé, deducts or retains the wages, or any part of the wages, of such employé for ware, tools, or machinery destroyed or damaged, shall be liable" both in penalties specified and in civil action brought by the party aggrieved.

Statute of Illinois, approved May 28, 1891, in section 3, declares it to be "unlawful for any person, company, corporation, or association employing workmen in this State to make deductions from the wages of his, its or their workmen, except for lawful money, checks, or drafts actually advanced without discount, and except such sums as may be agreed upon between employer and employé which may be deducted for hospital or relief fund for sick or injured employés." Section 4 provides that any deductions from wages may be recovered in appropriate action, and no off-set or counter-claim of any kind shall be allowed. Section 5 provides penalties for violations and evasions.

court of great authority, will undoubtedly stand as a precedent. The Statutes, moreover, belong to a class of legislation which has come into great prominence within the last few years; namely, legislation designed to adjust the relations of working-men to their employers by regulating the manner of employment, the hours of labor, and the payment of wages. It cannot be uninteresting, therefore, to examine the rule of constitutional law applied to defeat the Massachusetts Statute.

Let us briefly summarize the argument of the court. After stating that weaving is done in pursuance of a contract between employer and employé, and that imperfect weaving may often be due to negligence or want of skill on the part of the employé, the court proceeds to say that the object of the Statute is to forbid the withholding of any part of the contract price for non-performance of the contract, and to compel payment of the same price for work which in quality falls far short of the requirements of the contract as for that which is properly done, the only remedy left to the employer being the valueless one of a suit for damages.

Among the fundamental rights secured by the Declaration of Rights of Massachusetts, the court refer to the right of acquiring, possessing, and protecting property,<sup>1</sup> and hold that within this right is included the right to make reasonable contracts under the protection of the law. Attention is also called to the clause of the Federal Constitution forbidding the States to pass laws impairing the obligation of contracts.<sup>2</sup> Now, in the opinion of the court, the Weavers' Fines Bill may have either of two interpretations: (*a*), it may be held to permit a manufacturer to hire weavers, and to agree to pay a certain price for work done with care and skill, at the same time placing the employer under penalty to pay the price, though there may be failure of performance on the part of the employé; or (*b*), it may be held to permit the hiring of weavers only upon terms that the price for good work shall be paid, no matter how badly the work may be done. The Statute is unconstitutional under either interpretation: under (*a*), because it renders the contract of no effect, the essential element being that full payment shall not be made until there has been full performance; under (*b*), because it is an interference with the right to make proper and reasonable contracts in conducting a legitimate business.

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<sup>1</sup> Constitution, Massachusetts, Declaration of Rights, art. i.

<sup>2</sup> Constitution, United States, art. i. § 10.

A dissenting opinion, briefer than we might have desired, in view of the importance of the principles involved, was delivered by Judge Holmes. His points are as follows : (1) A Statute cannot impair the obligation of a contract made after the Statute went into effect ; (2) this Statute does not interfere with the right of acquiring, possessing, and protecting property more than laws against usury and gaming ; (3) though it may be urged that the power to make reasonable laws impliedly prohibits the making of unreasonable laws, yet legislation should not be overturned on this ground, "unless there is no room for honest difference of opinion ;" (4) if the Statute is regarded as putting an end to *quantum meruit* and recoupment for defective quality not amounting to failure of consideration, it puts an end to innovations in the common law, and there is no objection to doing so ; (5) if the Statute was passed with a view to prevent cheating of workmen by a pretence of imperfect work, it cannot be declared void as based on a false assumption made by the Legislature. It is as if in the view of the Legislature an honest tool were taken away from the employer because it was used dishonestly.

That the right of the citizen to carry on a lawful business, and to make all contracts necessary for that purpose, is included in the right of acquiring and possessing property, is generally admitted. At the same time it must also be admitted that the right is not an absolute one, and that it is subject to the same limitations as rights of property in general. The nature and extent of these limitations has been discussed in a great number of cases, to some of which we shall have occasion to refer. In the dissenting opinion of Judge Holmes, we find suggested one of the limitations on the right of the citizen to be protected in his property. Judge Holmes does not use or define the phrase "police power ;" yet it is a proper inference that in his view the Weavers' Fines Bill is to be classified as an exercise of the police power by the Legislature. The existence of this power is ignored in the prevailing opinion. If the Statute can be sustained, it is only as a legitimate exercise of the police power. It is necessary, therefore, to discover what is meant when that power is mentioned.

This is not the place for an extended review of the cases which have sustained the right of the Legislature to exercise the police power, and which show the almost infinite variety of senses in which the phrase "police power" may be used. We may leave unnoticed health and quarantine laws, and proceed at once to a class of cases much nearer Commonwealth *v.* Perry.

Perhaps the most widely quoted exposition of the police power in its relation to property rights is that given by Chief Justice Shaw in *Commonwealth v. Alger*.<sup>1</sup> It is there said that "rights of property, like all other social and conventional rights, are subject to such limitations in their enjoyment as shall prevent them from becoming injurious, and to such reasonable restraints and regulations established by law as the Legislature under the governing and controlling power vested in them by the Constitution may think necessary and expedient." In *Munn v. Illinois*,<sup>2</sup> Justice Field, speaking of the police power, says: "Whatever affects the peace, good order, morals, and health of the community, comes within its scope, and every one must use and enjoy his property subject to the restrictions which such legislation imposes."

Many Statutes have been enacted to regulate what are called "dangerous" occupations and businesses "affected with a public interest." In *Thorp v. Railway Co.*<sup>3</sup> a law requiring railway companies to maintain cattle-guards at crossings, and making the companies liable for all damages until the law shall be complied with, was declared to be a proper regulation for the prevention of harm to the community. Judge Redfield remarked that the police power in one sense means the power to regulate rights of any persons so as to subserve the rights of all others. A similar case is that of *Railway Co. v. Richmond*,<sup>4</sup> where the Supreme Court of the United States upheld an ordinance regulating the manner of propulsion of cars in the city of Richmond, notwithstanding charter privileges held by the company.

Though the case of *Munn v. Illinois*<sup>5</sup> is very familiar, we cannot pass over it without a further reference. There a Statute fixing maximum rates to be charged by owners of grain elevators in the city of Chicago was questioned, but was declared constitutional. The language of the court is as broad as possible. In dealing with the clause in the Bill of Rights that no person shall be deprived of property without due process of law, it is said that this has never been construed by the courts of any State so as to deny the legislative power to make all needful rules respecting the use and enjoyment of property. Familiar instances of the unquestioned exercise of this power are found in laws regulating ferries and mills, fixing compensation in shape of tolls, fixing value of the use

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<sup>1</sup> 7 Cushing, 53.

<sup>2</sup> 94 U. S. 113.

<sup>3</sup> 27 Vt. 140.

<sup>4</sup> 96 U. S. 521.

<sup>5</sup> 94 U. S. 113. Vid. *People v. Budd*, 22 N. E. Rep. 670 (N. Y.).

of money, and giving municipal bodies power to regulate the charges of hackmen, and the weight and price of bread. The Constitution, it is held, is not infringed by a law regulating business, which may render property used to carry on the business less valuable. This case and the Granger cases in general sustain the right of the Legislature to interfere between persons engaged in certain lines of business and people who deal with them, in order to settle conflicting interests. The question suggested is, When does a particular business become affected with a public interest?

We approach nearer the case under consideration in taking up the "Mill Acts" and the Acts permitting the draining of swamp-lands in spite of objection on the part of the owners of some of the land. In *Head v. Amoskeag Co.*<sup>1</sup> the questions arose upon petition by the company, whether the construction of the company's dams and mills and the flowing of Head's lands under authority given by the Mill Acts of New Hampshire were of benefit to the people, and whether by such flowing, Head's property was taken without due process of law and in violation of the right to acquire and hold property. The decision answered the first question in the affirmative, the second in the negative. Justice Gray said that it was unnecessary to decide whether the taking of land under the Mill Acts is a taking under the right of eminent domain; but such a Statute, considered as regulating the manner in which the rights of proprietors of land adjacent to a stream may be asserted and enjoyed, with a due regard to the rights of all and to the public good, is within the constitutional power of the Legislature. In other words, the Legislature may, for the public good, provide for the settlement of adverse claims,—that is, may settle people's quarrels for them by regulating the manner in which property rights may be enjoyed.

The case of *Wurts v. Hoagland*<sup>2</sup> decided that a Statute of New Jersey which provided for the drainage of any low or marshy land within the State, upon proceedings instituted by at least five owners of separate lots of land included in the tract and not objected to by the owners of the greater part of the tract, was valid, without reference to the right of eminent domain. The opinion in the case seems to imply that the draining of these lands, though held by private citizens, who would reap the benefit primarily, was a matter of sufficient public concern to justify an exercise of the police power.

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<sup>1</sup> 113 U. S. 9.

<sup>2</sup> 114 U. S. 606.

The laws against the manufacture and sale of oleomargarine are among those whose effect has been to restrict the right of the citizen to enter into any lawful business, and to make contracts in carrying on such business. The Missouri Court of Appeals, in *State v. Addington*,<sup>1</sup> in reviewing a conviction under a Statute forbidding the manufacture of oleomargarine, said that the Declaration of Rights does not mean "that all persons have an absolute right to life and property, and to the enjoyment of the gains of their own industry. On the contrary, each of the enumerated rights is held in subordination to the rights of society." The situation was summed up as follows: "A practice has sprung up which operates to defraud the people of their right of choice as to what they will eat, with reference to an article of food of constant and universal consumption. The Legislature has passed an Act which, if properly administered, will nip the practice in the bud. The courts must uphold and administer this Act as a valid exercise of the police power."

In *People v. Marx*,<sup>2</sup> the Supreme Court of New York declared an Oleomargarine Act unconstitutional; but in *People v. Aronsonberg*,<sup>3</sup> a later Statute, applying to the same article, was sustained, on the ground that while the previous Statute was aimed at every article designed to *take the place* of dairy butter, this Statute was aimed simply at articles designed to be *imitations* of butter, and calculated to deceive; hence, in the view of the court, the later Statute was constitutional, as an attempt to prevent fraud. The Legislature has power to enact such laws as it may deem necessary to prevent the simulated article being put on the market in such form or manner as may be calculated to deceive. In *Powell v. Pennsylvania*,<sup>4</sup> the Supreme Court of the United States refused to overrule a decision of the Pennsylvania court upholding an oleomargarine law, the reason given being that it could not be adjudged that Powell's rights had been infringed by the Statute without holding that although it may have been enacted in good faith for the protection of public health, it had in fact no real or substantial relation to those objects.

An interesting class of cases in the South have dealt with laws prohibiting within specified districts the sale or the transportation

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<sup>1</sup> 12 Mo. App. 214 (1884).

<sup>2</sup> 99 N. Y. 377.

<sup>3</sup> 105 N. Y. 123. Vid. *Palmer v. State*, 39 Ohio St. 236, 238 (1883).

<sup>4</sup> 127 U. S. 678.

by night of cotton in the seed. *Mangan v. State*,<sup>1</sup> approving *Davis v. State*,<sup>2</sup> declared such laws to be constitutional. *Commonwealth v. Alger* and *Munn v. Illinois* were relied upon by the court. Quoting from the earlier case in the same State, it was said that "the primary object of this law is not to interfere with the rights of property or its vendible character. Its object is to regulate traffic in the staple agricultural product of the State, so as to prevent a prevalent evil, which, in the opinion of the law-making power, may have done much to demoralize agricultural labor, and destroy the legitimate profits of agricultural pursuits, at least within the specified territory; . . . the necessity for such legislation, its propriety, justice, and wisdom, being a matter for legislative determination." A law of the same character was sustained by the North Carolina court in *State v. Moore*.<sup>3</sup> It was held to be a legitimate exercise of the police power in line with *Commonwealth v. Alger*, *Thorp v. Railway Co.*, and other similar cases which have not been mentioned.<sup>4</sup> Its object was "to protect planters by withdrawing the temptations offered to dishonest men to take from their fields, store-houses, or gin-houses, a valuable product that is so difficult to identify and reclaim, and to sell it to dealers under cover of the darkness."

Let us now glance at the situation in Massachusetts which led to the passage of the Weavers' Fines Bill. There were two classes of people in the community, whose interests in some respects were mutual, in others, antagonistic. On the one hand were the manufacturers; on the other, their employés,—the weavers. The position of the former was by far the stronger, because they controlled the money supplies upon which the latter depended for existence. The manufacturers had the power to punish their employés by levying fines, or, what is the same thing, by withholding wages. This power was of a nature to permit great abuse. It is true that imperfect work was often returned by the weavers. In many cases the imperfections were due to negligence and lack of skill; in many others, they were due to causes over which the weavers had no control. The injustice of the practice of withholding wages lay in

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<sup>1</sup> 76 Ala. 60 (1884); *Laws of Sess.* 1878-79, p. 206.

<sup>2</sup> 68 Ala. 58.

<sup>3</sup> *Laws of North Carolina*, 1887, c. 81, amended by Law of 1889, c. 187, 219; 104 N. C. 714 (1889).

<sup>4</sup> *Butcher, &c. Co. v. Crescent, &c. Co.*, 111 U. S. 46; *Beer Co. v. Massachusetts* 97 U. S. 25; *State v. Mugler*, 29 Kan. 259.

the fact that often no distinction was made between the two sources of imperfect work. The workmen were not in a position to compel an observance of the distinction, and they insisted that the law should protect their interests.

Here there was a standing quarrel to be settled. It seemed necessary to place the two classes on a more equal footing. For this purpose the police power of the State was invoked. It was enacted that the employer should not use 'his position to the weavers' disadvantage, just as in the Drainage Acts it was declared that one owner of land should not, by withholding his consent to the proposed improvement, injure the interests of adjacent owners, and as in the Mill Acts it was declared that owners of land on streams should not delay industry by refusing to submit to flowage. In establishing the constitutionality of these Acts, it was argued that the public interest was conserved by the settlement of such controversies. Is not the public welfare just as much conserved by the settlement of quarrels between employer and employé? Are not public improvements and industry equally advanced? The object in all these cases seem to be exactly the same. The police power seems to be rightly exercised in all of them.

As to the scope of the Weavers' Bill, we note that the industry itself was not interfered with. Contracts for weaving were just as possible after as before the Statute; in fact, the operation of the Statute has been to some extent evaded by contracts for piece-work. The employer still had it in his power to select workmen best fitted for the peculiar industry, and to provide rigid superintendence. As Judge Holmes suggests, the effect of the law was to take away certain remedies, leaving the employer his action on the contract. The Legislature declared it to be expedient and necessary for the prevention of certain evils, and for the protection of industry, that limitations should be placed on the right of employers of weavers to introduce, expressly or impliedly, certain conditions into their contracts. The reasoning in the cotton-seed cases cited above, applies almost strictly to *Commonwealth v. Perry*. Strangely enough, the language of *Commonwealth v. Alger*, relied on in North Carolina and Alabama to sustain extensions of the police power, is not followed in the State in which it was used.

The majority of the court cited a number of cases in support of the opinion, and to these we must now turn. One of them is *Godcharles v. Wiseman*,<sup>1</sup> decided in Pennsylvania in 1886. It was held

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<sup>1</sup> 113 Pa. St. 431.

that a Statute passed in 1881,<sup>1</sup> forbidding employers to give "store orders" in payment of wages, was invalid. Gordon, J., said: "An attempt has been made by the Legislature to do what, in this country, cannot be done; that is, to prevent persons who are *sui juris* from making their own contracts. The Act is an infringement alike of the right of the employer and employé; more than this, it is an insulting attempt to put the laborers under a legislative tutelage which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States." The Statute is disposed of in this summary manner, without citation of authorities and without consideration of the immense scope of the police power of the Legislature.

The second of the cases cited is more satisfactory as a statement of the view opposed to that of the writer. In *State v. Goodwill*,<sup>2</sup> a Statute of West Virginia,<sup>3</sup> which prohibited the issue, for payment of wages by persons engaged in mining and manufacturing, of any order or paper except such as specified in the Statute, was held to be invalid. Referring to the Fourteenth Amendment to the Constitution of the United States, and to the Bill of Rights of West Virginia, declaring the inviolability of property, the court asked: "Can the Legislature, in view of these constitutional guarantees, limit or forbid the right of contract between parties under no mental, corporal, or other disability, when the subject of the contract is lawful, not public in its character, and the exercise of it is purely private and personal to the parties?" The principle of the decision is, that "a person living under the protection of this government has the right to adopt and follow any lawful pursuit, not injurious to the country, which he may see fit. And as an incident to this is the right to labor, make contracts in respect thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts," etc.

The court distinguished this Statute from the Statutes relating to railways, elevators, water-mills, and hackmen, on the ground that in the latter the public interest was protected. Strong language was used as to the impolicy of permitting such legislation as the Act in question to go unchallenged. As before remarked, a distinction of this kind seems strained. In every case, in the "Store-order" Acts, as well as in the others mentioned, conflicts between certain classes in the community seemed dangerous to the State; the public in-

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<sup>1</sup> Act of June 29, 1881 P. L. 147.

<sup>2</sup> 33 W. Va. 179 (1889)

<sup>3</sup> Stat. 1887, c. 63.

terest was that private interests should be reconciled. The distinction attempted was not proved, and was therefore a begging of the whole question.

In *State v. Coal and Coke Co.*<sup>1</sup> another section of the same Statute which forbade employers to sell to their employés merchandise and supplies at a greater profit than to persons not employed by them, was held unconstitutional for the same reasons. The remedy, it was stated, was in the hands of the employé.

A third case cited is that of *Millitt v. People*;<sup>2</sup> the distinction already criticised is again made, and the rights of the laborer are similarly described as in the cases just noted. The defendant was indicted for failure to obey a Statute of Illinois<sup>3</sup> which required all owners of coal mines to furnish a track scale upon which to weigh coal lifted from the mines, and which provided that all contracts for the mining of coal in which the weighing of the coal as required in the Statute should be dispensed with, should be null and void. The defendant was discharged, on the ground that there was nothing in the condition of the laborer in mines to disqualify him from contracting in regard to the price of his labor, or in regard to the mode of ascertaining that price.<sup>4</sup>

Judge Holmes cites the case of *Hancock v. Yaden*,<sup>5</sup> decided in Indiana in the same month as *State v. Goodwill*. The plaintiff in this case demanded payment in United States money for services as workman in the defendant's mine. The latter set up a written contract whereby the plaintiff agreed to accept payment in goods and merchandise at the defendant's store, and waived his right to payment in money. The question was whether this contract was valid, a Statute of Indiana forbidding the making of such contracts between employers and employés engaged in coal mining. The court said: "The right to contract is not and never has been in any country where, as in ours, the common law prevails and con-

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<sup>1</sup> 33 W. Va. 188 (1889).

<sup>2</sup> 117 Ill. 294 (1886).

<sup>3</sup> Laws of 1885, p. 221.

<sup>4</sup> The court in *Commonwealth v. Perry* also cite *People v. Marx*, 99 N. Y. 377; *In re Jacobs*, 98 N. Y. 98, where a law forbidding the manufacture of cigars in tenement houses was held unconstitutional, on the ground that while it was ostensibly a health law, it was not in fact of such a character; *People v. Gillson*, 109 N. Y. 389, a case denying the validity of an Act restraining the giving of prizes in connection with the sales of merchandise. See also *Ex parte Kubeck*, 85 Cal. 274: an eight-hour ordinance of the city of Los Angeles is held unconstitutional, as an infringement of the right to make and enforce contracts.

<sup>5</sup> 121 Ind. 366.

stitutes the source of all civil law, entirely beyond legislative control." Numerous instances of legislative control of contracts are mentioned. "It cannot be denied, without repudiating all authority, that the Legislature does possess some power over the right to contract; and if it does, then nothing can be clearer than that this power extends far enough to uphold a Statute providing that payment of wages shall be made in money, where there is no agreement to the contrary after the services have been rendered." It is denied that this is class legislation; it operates on all who are similarly situated, and neither confers special privileges nor makes unjust discrimination.<sup>1</sup>

As an additional authority, we may refer to the case of *Weil v. State*.<sup>2</sup> A Statute of Ohio<sup>3</sup> made it unlawful for the vendor of personal property, sold on the condition that the title should remain in him until payment in full had been made, to take possession of such property without tendering or refunding to the purchaser the sums already paid by him. This was held a constitutional enactment. The decision was that the Legislature simply established an equitable rule for an adjustment of claims of parties to such a contract. The oppression and hardship which grew into the contracts formerly allowed, whereby the vendee forfeited not only the property, but also the instalments of the purchase price paid by him, were remedied. The defendant was at liberty to enter into a contract of this kind or not, but having once entered, the Statute was binding upon him. This case is closely analogous to *Commonwealth v. Perry*.<sup>4</sup>

It is thus seen that the authorities are divided on the question whether the police power should be extended to uphold a Statute like that of the Weavers' Fines Bill. It must be remembered that a wide discretion rests in the Legislature. The constitutional provisions protecting the right to enjoy property are not in any sense superior to the legislative right to use the police power for the public benefit. An ostensible exercise of the power which in reality cannot be sustained *from any point of view* as legitimately within

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<sup>1</sup> *Johns v. State*, 78 Ind. 332; *McAnnich v. Miss. R. R. Co.*, 20 Ia. 338.

<sup>2</sup> 40 Ohio St. 450 (1889).

<sup>3</sup> Stat. May 24, 1885.

<sup>4</sup> For other interesting cases where property rights were held to be constitutionally regulated by use of the police power, see *Bertholf v. O'Reilly*, 74 N. Y. 509; *Prentiss v. Weston*, 111 N. Y. 460; *Hawthorn v. People*, 109 Ill. 302; *Commonwealth v. Morningstar*, 22 Atl. Rep. 867; *Commonwealth v. Barrett*, 17 S. W. Rep. 336.

that power is undoubtedly invalid ;<sup>1</sup> but if there is any doubt, however slight, that doubt must be resolved in favor of the Legislature. That is, if from any point of view there is justification for legislative interference for the interests of the public, and if the means adopted are appropriate to the end, there is no conflict with the constitutional guarantees protecting private property, though the legislation may restrict property rights. The courts at times lose sight of the force of this principle ; *e. g.*, in *State v. Goodwill*, where much of the language used is not in point, because dealing with the Statute there under examination as a matter of public policy. Public policy cannot enter into consideration in the determination of the constitutionality of an Act of the Legislature. That the Statute assumes that the employer is at times dishonest, and the employé at times an imbecile, is a political question to be discussed in the Legislature. The caution required of the court in reviewing legislation has been stated in numerous cases.<sup>2</sup>

The Weavers' Fines Bill in effect simply modified the remedies secured to the employer under his contracts for weaving. The only constitutional restraint upon changes in remedies seems to be this, that no remedies under contracts existing at the time of the passage of the Statute can be taken away, if by so doing the obligation of the contracts is substantially impaired. A party to a contract has a vested right in the contract, and if the law is afterwards so changed that the means of legally enforcing the contract are materially impaired, the obligation no longer remains the same. Such a change in the laws violates the Federal Constitution.<sup>3</sup> The Constitution, however, does not guarantee that future contracts shall be enforced by existing remedies. It does not forbid the passing of laws which restrict the operation of future contracts. A rule of law allowing certain remedies is like any other rule of law. It is subject to amendment or repeal, and all such changes

<sup>1</sup> *In re Jacobs*, 98 N. Y. 98.

<sup>2</sup> The presumption is always in favor of the validity of the Statute. *Hawthorn v. People*, 109 Ill. 302 ; Chief Justice Shaw in *Wellington et al.*, *Petitioners, etc.*, 16 Pick. 95 ; *Lehman v. McBride*, 15 Ohio St. 573 ; *Matter of Gilbert Elevated Railway Co.*, 70 N. Y. 361 ; *People v. Albertson*, 55 N. Y. 50 ; *Mossman v. Higginson*, 4 Dallas, 12.

The Legislature must be the sole judge of the necessity of action. Harshness of the measures adopted has no effect on the question of power. *Bancroft v. City of Cambridge*, 126 Mass. 438 ; *Eastman v. State*, 109 Ind. 278 ; *Missouri Pacific Railway Co. v. Humes*, 115 U. S. 512 ; *Powell v. Pennsylvania*, 127 U. S. 678.

<sup>3</sup> *Knight v. Dorr*, 19 Pick. 48 ; *Edwards v. Johnson*, 105 Ind. 594 ; *Green v. Biddle*, 8 Wheat. 84 ; *Curran v. State*, 15 How. 304 ; *Goodale v. Fennell*, 27 Ohio St. 432 ; *Wynehamer v. People*, 13, N. Y. 399.

are valid if they are made to operate *in futuro*. They are even valid retrospectively if they do not interfere with vested rights.<sup>1</sup>

In the opinion of the court, the remedy left to employers of weavers is not one of practical value. While that consideration, admitting it to be true, would have been pertinent in a case involving a contract made before the passing of the Statute, it does not seem to be so in discussing a Statute wholly prospective in its operation, and passed by the Legislature in the exercise of its police power. An employer is given sufficient notice of his rights under the contracts he may make. It would be absurd to say that he has a vested right in the remedies he may gain, provided he enters into contracts with his employés. The Statute must be read into each contract; it is as much a part of the contract as if expressly included.<sup>2</sup> Bankruptcy laws are upheld on this ground. They limit the rights of creditors, and declare that certain formalities shall operate to discharge the debtor and put an end to his liability. The creditor cannot complain, since the laws give him full notice of the limitations upon his rights under his contracts.<sup>3</sup>

In view of these well-settled doctrines, it is somewhat surprising that any reference to the clause forbidding the impairment of contracts should have crept into the opinion of the court in *Commonwealth v. Perry*. The Weavers' Fines Bill had nothing to do with existing contracts, and could not impair obligations arising from them.

*Herbert Henry Darling.*

Boston, January, 1891.

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<sup>1</sup> *Commonwealth v. Commissioners*, 6 Pick. 501; *Sampeyreal v. United States*, 7 Pet. 222; *Butterfield v. Rudde*, 58 N. Y. 489; *Richardson v. Akin*, 87 Ill. 138; *Read v. Bank*, 23 Me. 318.

State Legislatures have unquestionably the right to pass laws which operate to control and modify the express or implied provisions of contracts. *James v. Stull*, 9 Barb. 482; *Aycock v. Martin*, 37 Ga. 124.

<sup>2</sup> *Smith v. Parsons*, 1 Ohio, 236.242; *Jewell v. Railway Co.*, 34 Ohio St. 601; *Brine v. Insurance Co.*, 96 U. S. 627; *Weil v. State*, 46 Ohio St. 450; *Railroad Co. v. McClure*, 10 Wall. 511; *Long v. Straus*, 107 Ind. 94.

<sup>3</sup> *Bigelow v. Pritchard*, 21 Pick. 169; *Blanchard v. Russell*, 13 Mass. 1, 19; *Wheelock v. Leonard*, 20 Penn. St. 440; *Eckstein v. Shoemaker*, 3 Wheat. 15.